UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

BLAKE SETTLES, as Personal Representative of the Estate of DANIEL FREEMAN,	)	
Plaintiff,	)	
v.	)	**CASE NO. 1:03-CV-306**
JAMES A. HERMAN, individually, and in his official capacity as Sheriff of Allen County,	)	
Defendant.	)	

MEMORANDUM OF DECISION AND ORDER

I. INTRODUCTION

Daniel Freeman ("Freeman") died in the Allen County Lockup on August 15, 2001, due to toxic levels of alcohol and pain medication in his blood. In response, Plaintiff Blake Settles ("Settles"), the personal representative of Freeman's estate, brought this lawsuit against Defendant James Herman, Sheriff of Allen County ("Herman" or "the Sheriff"), in his official capacity under 42 U.S.C. § 1983.[1] Settles alleges that the Sheriff's policy concerning the intake process for intoxicated inmates at the Allen County Lockup facility was deliberately indifferent to their health and welfare and led to Freeman's death.[2] Settles also asserts a wrongful death claim against the Sheriff for negligence under Indiana law.

The Sheriff now moves for summary judgment. For the reasons given below, the motion

---

[1] Settles has abandoned his individual capacity claim against Herman under § 1983, and therefore summary judgment will be granted on that claim.

[2]This Court has subject matter jurisdiction under 28 U.S.C. § 1331. Jurisdiction of the undersigned Magistrate Judge is based on 28 U.S.C. § 636(c), all parties consenting.

will be DENIED as to Settles's § 1983 claim, and the Court will take the remainder of the motion (pertaining to the negligence claim) under advisement. The Plaintiff also filed a Motion to Strike various documents submitted by the Sheriff in support of his motion for summary judgment, but since the motion as to § 1983 must be denied even if those documents are considered, the motion is deemed MOOT.

II. FACTS

Freeman was arrested in Allen County, Indiana, on July 31, 2004, for allegedly operating a vehicle while intoxicated. His blood alcohol level was reported to be .34%. After appearing in court the next day and posting bond, Freeman was released and ordered to appear in court on August 15, 2001.

When Freeman appeared on August 15, he was visibly intoxicated and admitted he had been drinking, so the judge ordered him remanded to the Allen County Jail. Freeman was removed from the courtroom to the Allen County Lockup with some assistance from a bailiff, who noted that Freeman "was able to walk under his own power, as he did when he entered the courtroom. However, I did place my hand on the defendant's left [arm] in order to assist his movement."

The bailiff turned Freeman over to the Lockup personnel at about 11:00 a.m. Freeman was considered too intoxicated to be processed or to undergo receiving screening, so he was placed in a cell until sufficiently sober to be processed.

Freeman was observed by Confinement Officer Javier Casas at approximately 11:15 a.m. when Casas entered Freeman's cell. Casas was able to get Freeman to open his eyes, which he believed to be an appropriate response given Freeman's intoxicated condition. No unusual

actions or requests for assistance were made by Freeman.

At 12:45 p.m., an Officer Mascarro checked on Freeman and found him to be sleeping and unresponsive to a verbal query. He checked for a pulse and found one after applying pressure behind Freeman's ear. Freeman then opened his eyes and muttered something unintelligible, supposedly another appropriate response given Freeman's intoxication.

At 1:00 p.m., Sergeant Wanda Evans and Lieutenant Roger Compton attempted to get a response from Freeman and were, again, successful. This time, Freeman mumbled something unintelligible and attempted to sit upright.

At 1:15 p.m., Officer Mascarro checked Freeman's pockets for personal property. Freeman, while not completely awake, made a movement with his hands to push Mascarro's hand away.

After shift change at approximately 2:45 p.m., Corporal Penny Lake checked on Freeman and found him unconscious, blue in color, unresponsive, and lacking a pulse. An ambulance was called and Freeman was transported to the hospital, where he was pronounced dead. A later autopsy would reveal that at the time of death, Freeman had a blood-alcohol level of .378% and had various drugs in his system, including very high levels of Oxycondone (commonly referred to by its trade name, Oxycontin) and "more than a therapeutic level of Proproxyphene and Norproproxyphine." Freeman apparently never told anyone he had recently consumed these drugs.

The Sheriff's written policies and procedures concerning the provision of medical care to inmates direct that inmates are to undergo "receiving screening." This screening determines if an inmate is to be accepted by the jail without medical clearance, or whether he must first

undergo some medical review or care. For the most part, the screening amounts to asking the inmate a series of detailed questions concerning his medical history and condition.

The written policy does not address what jail personnel should do if the inmate is too intoxicated to meaningfully answer these questions. In those instances, jail personnel follow an unwritten policy of allowing the inmate to"sleep it off" and checking on the inmate "once in awhile" until he is ready to be processed, as they did with Freeman.

Within days of Freeman's death, and in response to it, the Sheriff's Department altered its intake policy. Now, every person booked into the Lockup is administered a breathalyzer test, which determines the level of alcohol in their system. If the person's blood-alcohol level exceeds .25%, the person is not accepted into the Lockup, but is instead immediately transported to a local hospital for medical attention. The breathalyzer now used by the Sheriff's Department for this purpose cost about $300. At the time that Freeman was transported to the Lockup, the Sheriff's Department owned several portable breathalyzer testing machines.[3]

Settles's principal argument under § 1983 is that jail personnel failed to render aid to Freeman because the Sheriff's policy or procedures concerning inmates exhibiting serious medical conditions, such as acute alcohol toxicity, did not require them to do so. Indeed, Settles's argument is that the Sheriff's policy essentially guarantees that every inmate too drunk to even communicate to the jailers, including certainly those who are dangerously drunk, will be denied any medical screening until he "sobers up" enough to communicate. Settles argues that a reasonable jury could determine that this policy was so inadequate as to constitute deliberate

[3]The Sheriff argues that this evidence is inadmissible under Federal Rule of Evidence 407, which bars evidence of subsequent remedial measures. Although it is not necessary to rule on this argument for the purposes of this Order, it appears that FRE 407 would indeed bar this evidence from being introduced at trial.

indifference to the serious medical needs of inmates such as Freeman, and thus summary judgment must be denied.

III. SUMMARY JUDGMENT STANDARD

Summary judgment may be granted only if there are no disputed genuine issues of material fact. *Payne v. Pauley*, 337 F.3d 767, 770 (7th Cir. 2003). When ruling on a motion for summary judgment, a court "may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts; these are jobs for a factfinder." *Id.* The only task in ruling on a motion for summary judgment is "to decide, based on the evidence of record, whether there is any material dispute of fact that requires a trial." *Waldridge v. American Hoechst Corp.,* 24 F.3d 918, 920 (7th Cir. 1994). If the evidence is such that a reasonable fact-finder could return a verdict in favor of the nonmoving party, summary judgment may not be granted. *Payne*, 337 F.3d at 770. A court must construe the record in the light most favorable to the nonmoving party and avoid "the temptation to decide which party's version of the facts is more likely true," as "summary judgment cannot be used to resolve swearing contests between litigants." *Id.* However, "a party opposing summary judgment may not rest on the pleadings, but must affirmatively demonstrate that there is a genuine issue of material fact for trial." *Id.* at 771.

IV. DISCUSSION[4]

In order to prevail on a § 1983 claim, Settles must establish that the Sheriff (1) deprived

[4]At the outset, Herman contends that Settles's complaint fails to state a claim because it does not allege that the deprivation occurred because of a specific written policy, only a single act. *See Freeman v. Fairman*, 916 F. Supp. 786, 790-01 (N.D. Ill. 1996). However, unlike the Plaintiff in *Freeman*, who merely complained about a single incident, Settles actually points to a policy, practice, or custom that allegedly caused a constitutional deprivation. Thus, Herman's argument is unavailing.

Freeman of a constitutional right and (2) acted under color of state law. *Brokaw v. Mercer County,* 235 F.3d 1000, 1009 (7th Cir. 2000). Since the Sheriff is sued in his official capacity, Settles must also establish that the constitutional deprivation Freeman experienced was caused by a policy or custom of the Sheriff's Department. *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 690-91 (1978).[5]

Because he was a pretrial detainee, Freeman had a Fourteenth Amendment right not to be punished without due process, and this right encompasses the protections against medical mistreatment applicable to Eighth Amendment claims. *See Holmes v. Sheahan*, 930 F.2d 1196, 1199 (7th Cir. 1991). The government "has an affirmative duty 'to provide persons in its custody with a medical care system that meets minimal standards of adequacy,'" and the "government's failure to provide medical care . . . is . . . actionable under § 1983 when it evinces 'deliberate indifference to a prisoner's serious illness or injury.'" *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 105 (1976)).

A plaintiff can establish a policy by showing "(1) an express policy that, when enforced, causes a constitutional deprivation; (2) a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well-settled as to constitute a custom or usage with the force of law; or (3) . . . that the constitutional injury was caused by a person with final policymaking authority." *McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995) (internal quotation marks omitted).

Settles claims that Sheriff Herman's express policy of treating all inmates too intoxicated to coherently communicate as simply drunks who needed to "sleep it off," before they could be

[5]Claims against government officers in their official capacities are actually claims against the government entity for which they work. *Kentucky v. Graham*, 473 U.S. 159, 166-67 (1985).

medically screened, was certain to eventually deprive an inmate with a serious medical condition, such as Freeman, from medical treatment. *See Monell*, 436 U.S. at 694 ("[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.").

Yet, § 1983 municipal liability jurisprudence illustrates that Settles must also show that the Sheriff's policy, through deliberate conduct, was the "moving force" behind the injury alleged; that is, he must show that the municipal action was taken with the requisite degree of culpability and that there is a direct causal link between the policy and the deprivation of Freeman's constitutional rights. *Bd. of County Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397, 404 (1997). This methodology implicates the "deliberate indifference" standard and means that Settles must establish that the Sheriff knew of and disregarded an excessive risk to inmate health and safety. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). In order to "know of" the excessive risk, it is not enough that the person merely "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists . . . [rather,] he must also draw that inference." *Id.* Correspondingly, if a person is aware of a substantial risk of serious harm, he may be liable for neglecting a prisoner's serious medical needs on the basis of either his action or inaction. *Id.* at 842.

Therefore, to impose official capacity liability upon the Sheriff under *Farmer,* Settles must show that the Sheriff (1) had a policy that posed a substantial risk of serious harm to Freeman; and (2) knew the policy posed this risk. *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1188-89 (9th Cir. 2002) (citing *Farmer*, 511 U.S. at 837).

The policy of the Sheriff is to screen every inmate to determine if they have taken drugs or alcohol, and also to determine when, and in what amount. (*See* Dep. of James Herman, Ex. 11 at 7; Medical Screening Questionnaire, question # 4.) The policy also provides that inmates who have mixed alcohol and an overdose of drugs are not to be admitted to the jail without medical clearance. (*Id.*, Ex. 11.)

However, as in *Gibson*, 290 F.3d at 1189, there is a critical exception to these procedures: the processing is delayed if an inmate "comes in and he's had too much to drink," in which case the policy is to put the inmate in a cell and "let him sleep it off until he can be processed." (Herman Dep. at 83-84.) The procedure is then to check on the inmate "once in awhile . . . and

. . . keep trying to wake 'em up until they're ready to process in." (*Id.*) The Sheriff says that this procedure was followed in "textbook" fashion in Freeman's case. (*Id.*)

This exception to the normal screening procedure poses a substantial risk of serious harm to those with toxic levels of alcohol or drugs in their system. *Gibson*, 290 F.3d at 1189. Indeed, the reason Freeman was not processed was because he was "inebriated" and incoherent, yet it was his urgent medical need that *made* him incoherent and rendered him unqualified for medical evaluation. (Herman Dep. at 95.) As a consequence, Freeman's serious medical needs went untreated; he was put in a cell rather than medically evaluated, and treated as a mere drunk rather than someone dangerously drunk. (*Id.*) Had some form of medical evaluation been conducted, Freeman could have been taken to a hospital for some form of intervention to save his life.[6]

The Sheriff's liability, however, hinges not only on the existence of a policy that poses a

[6]Although it is conceivable that Freeman arrived at the lockup in such a dire condition that he was already beyond medical help, the Sheriff does not make this claim at the present time.

substantial risk of serious harm, but also on whether the Sheriff was aware of this risk. *Gibson*, 290 F.3d at 1190 (citing *Farmer*, 511 U.S. at 837). The requisite mental state can be established either directly or by "inference from circumstantial evidence." *Id*. (citing *Farmer*, 511 U.S. at 842).

On this record, a jury could conclude that the Sheriff "knew that inevitably some prisoners arrive at the jail with urgent health problems requiring hospitalization." *Id.* The fact that the Sheriff requires detainees to be checked for medical conditions requiring immediate attention indicates such knowledge. *Id.* Furthermore, the Sheriff's policies make it clear that he was aware that gross intoxication is a condition that sometimes requires urgent care, or at least immediate medical review. (*See* Herman Dep., Ex. 11.) Indeed, the Sheriff knew that people arriving at the jail were often so intoxicated that they could not even participate in the screening, yet these people, the ones who needed the screening the most, were precisely the ones the Sheriff's policy excluded from the process.

It is not necessary that the Sheriff knew that the policy would pose a substantial risk of serious harm to Freeman in particular. *Gibson*, 290 F.3d at 1190. As long as the jury can infer that the Sheriff knew that his policy of not screening certain incoming detainees would pose a risk to someone in Freeman's situation, summary judgment is unavailable. *Id*. (citing *Farmer*, 511 U.S. at 843-44).

In sum, the Sheriff's policy posed a substantial risk of serious harm to someone in Freeman's situation, and there is sufficient circumstantial evidence that a reasonable jury could infer that the Sheriff knew that this risk existed and chose to ignore it. *Id.* at 1193. Therefore,

the Sheriff's motion for summary judgment must be denied on Freeman's § 1983 claim.[7]

V. CONCLUSION

For the reasons given above, the Sheriff's motion for summary judgment is GRANTED as to Settles's individual-capacity claim under § 1983 and his claim for punitive damages under § 1983, but DENIED as to his official-capacity claim under § 1983. The remainder of the Sheriff's motion, pertaining to Settles's state-law negligence claim, is taken under advisement. Finally, Settles's motion to strike is DENIED as it relates to the § 1983 claim.

Enter for this 6th day of December, 2004.

/S/ Roger B. Cosbey
Roger B. Cosbey,
United States Magistrate Judge

[7]Municipalities, such as the Sheriff in his official capacity, *see* n.5 *supra*, cannot be liable for punitive damages under § 1983, and therefore summary judgment will be granted on that claim. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).